

ENTERED

December 12, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ESPIRION MENDOZA,

§

Plaintiff,

§

v.

§ CIVIL ACTION NO. H-17-2836

GUARD 1 SERVICES, LLC

§

Defendant.

ORDER

Espirion Mendoza sued Guard 1 Services, LLC seeking unpaid overtime wages under the Fair Labor Standards Act. The case was reassigned to this court on November 28, 2017. (Docket Entry No. 16). Three motions are pending: (1) Guard 1's motion to dismiss or stay the case pending the close of arbitration; (2) Mendoza's motion for conditional certification, both of which were filed before Mendoza filed his first amended complaint; and (3) Guard 1's expedited motion to stay consideration of plaintiff's motion for conditional certification pending a ruling on defendant's motion to dismiss. (Docket Entries No. 12, 14, 22).

The amended complaint, (Docket Entry No. 18), moots the motion to dismiss or stay the case. Guard 1 argues that the motion is not moot because the amended complaint is substantially the same as the original complaint. The factual allegations in the amended complaint are the same as those in the original complaint, but the definition of the class is different. Although Guard 1 "intends to renew its Motion to Dismiss in response to the Amended Complaint in a timely fashion," it moved for expedited consideration of its current motion to dismiss, arguing that the court should rule on the existing motion to dismiss and consider the response, reply, and surreply. (Docket Entry No. 22). Guard 1 seeks this expedited review because its response to Mendoza's class certification

is due December 12, 2017. (*Id.*). Mendoza is opposed to this relief.

The motion to stay consideration of the motion for conditional certification is granted in part and denied in part. Guard 1 need not file a renewed motion to dismiss. The court will consider the current briefing on the issue because the parties have adequately presented the issues; the amended complaint does not change the analysis; and Mendoza's post-amendment response and surreply that do not raise mootness indicate that a ruling on the current briefing is appropriate. Guard 1's response to the motion for conditional certification is no longer due on December 12, 2017, but instead no later than 7 days after the court rules on the motion to dismiss.

SIGNED on December 12, 2017, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge